

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JESSICA STEPHENS,

Plaintiff,

v.

IRA D. MORRIS and L&J COX
TRUCKING, INC.,

Defendants.

CIVIL ACTION FILE

NO.:

NOTICE OF REMOVAL

TO: Judges of the United States District Court
Northern District of Georgia, Atlanta Division

Pursuant to 28 U.S.C. § 1441 *et seq.*, Defendants Ira D. Morris and L&J Cox Trucking, Inc. (hereinafter “these Defendants”) hereby remove the civil action captioned *Jessica Stephens v. Ira D. Morris and L&J Cox Trucking, Inc.*, State Court of Fulton County, Civil Action File No. 23EV001704 from the State Court of Fulton County, Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division. Removal is based upon the following:

Removal Based on Diversity Jurisdiction

1. This Court has original jurisdiction of this matter pursuant to 28 U.S.C. § 1332 and this matter may be removed to this Court under 28 U.S.C. §§ 1441 and 1446.

Description of the Action

2. On March 31, 2023, Plaintiff filed a Complaint against these Defendants alleging negligence related to a motor vehicle accident that occurred on or about March 30, 2021 in Fulton County, Georgia. *See generally*, Plaintiff's Complaint (Exhibit "A").

Consent for Removal

3. The procedure for removing a case to Federal Court is codified in 28 U.S.C. § 1446 and requires that "all defendants who have been properly joined and served" consent to the removal. 28 U.S.C. § 1446(b)(2)(A) (emphasis added); *Cook v. Randolph County, Ga.*, 573 F.3d 1143, 1150 (11th Cir. 2009); *Tri-Cities Newspaper, Inc. v. Tri-Cities Printing Pressmen and Assistants' Local 349*, 427 F.2d 325, 326-27 (5th Cir. 1970).

4. These Defendants consent to the removal of this Action through undersigned counsel.

5. These Defendants, which are the only defendants properly joined and served within the meaning of 28 U.S.C. § 1446, file the Notice of Removal of this Action.

The Amount in Controversy Requirement

6. In diversity cases, 28 U.S.C. § 1332(a) requires that the matter in controversy exceed the sum or value of \$75,000.

7. In Plaintiff's Complaint, she seeks to recover damages for personal injury, past and future pain and suffering, general damages, and unspecified special damages. *See* Plaintiff's Complaint ¶ 5. Plaintiff's Complaint is silent as to the amount of damages sought.

8. Plaintiff has not made any demand to these Defendants to settle the case as of the date of this filing.

9. To discover whether the amount in controversy is met, Defendant Morris served discovery in the State Court of Fulton County requesting that Plaintiff "admit that the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, within the meaning of 28 U.S.C. Section 1332(a)" and "admit that you claim an award of damages in excess of \$75,000 as a result of the Accident in this lawsuit". *See* Defendant Morris' Requests for Admissions to Plaintiff, at Request Nos. 22 and 24, attached as Exhibit "B". Plaintiff's responses

to both of these Requests, served on May 31, 2023, were “Admit.” *See* Plaintiff’s Responses to Defendant Morris’ Requests for Admissions, at Response Nos. 22 and 24, attached as Exhibit “C”.

10. On June 1, 2023, Plaintiff filed her First Amended Complaint to specify that the amount of special damages sought is \$52,183.20 with estimated future medical procedures totaling \$192,500. *See* Plaintiff’s First Amended Complaint, ¶ 2, attached as Exhibit “D”.

11. Thus, the amount in controversy has been established by a preponderance of the evidence pursuant to 28 U.S.C. § 1446(c)(2)(A)-(B) as shown by Plaintiff’s Responses to Requests for Admissions.

The Diversity of Citizenship Requirement

12. For diversity jurisdiction under 28 U.S.C. § 1332(a)(1), the parties must be citizens of different states.

13. Upon information and belief, Plaintiff is a resident and citizen of the State of Georgia and is entirely diverse from these Defendants. Plaintiff’s Complaint does not allege her citizenship. *See* Complaint, *void*. According to the police report, Plaintiff is a resident of Meansville, Georgia. *See* Motor Vehicle Crash Report, attached as Exhibit “E”. These Defendants have no information indicating Plaintiff is a citizen of any state other than Georgia.

14. Defendant Ira D. Morris is a resident and citizen of the State of Arkansas and is entirely diverse from Plaintiff. Plaintiff's Complaint ¶ 1; Defendants' Answer ¶ 1, attached as Exhibit "F".

15. Defendant L&J Cox Trucking, Inc. is a foreign corporation with its state of incorporation and principal place of business being the State of Arkansas and is, therefore, a citizen of Arkansas. Plaintiff's Complaint ¶ 2; Defendants' Answer ¶ 2. Defendant L&J Cox Trucking, Inc. is entirely diverse from Plaintiff.

Compliance with Deadline for Removal

16. Pursuant to 28 U.S.C. §1446(b)(3), "if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may be first ascertained that the case is one which is or has become removable."

17. Here, no amount was prayed for in Plaintiff's Complaint. *See generally* Complaint. Furthermore, no demand ever made of these Defendants prior to the filing of the Complaint.

18. These Defendants had no knowledge that the amount in controversy exceeded the jurisdictional threshold contained in 28 U.S.C. § 1332(a) until receipt of Plaintiff's Responses to Defendant Morris' Requests for Admissions on May 31,

2023. *See* Plaintiff’s Responses to Defendant Morris’ Requests for Admissions, at Response Nos. 22 and 24.

19. These Defendants have initiated removal within 30 days of receipt of a paper indicating that the amount in controversy requirement was met and the case had become removable. Based on 28 U.S.C. §1446(b)(3) this Notice of Removal is timely filed.

The State Court Proceeding

20. The state court proceeding is identified as follows: *Jessica Stephens v. Ira D. Morris and L&J Cox Trucking, Inc.*, State Court of Fulton County, Civil Action File No. 23EV001704. A Notice of this Removal will be filed with the State Court of Fulton County upon filing of this Notice of Removal pursuant to 28 U.S.C. § 1446(d).

All State-Court Documents

21. Pursuant to 28 U.S.C. § 1446(a), the following state-court filings are attached hereto: Plaintiff’s Complaint (Exhibit “A”); Plaintiff’s First Amended Complaint (Exhibit “D”); Defendants’ Answer to Plaintiff’s Complaint (Exhibit “F”); Summons to Defendant Morris (Exhibit “G”); Summons to Defendant L&J Cox Trucking, Inc. (Exhibit “H”); Affidavit of Service on Defendant Morris (Exhibit “I”); Affidavit of Service on Defendant L&J Cox Trucking, Inc. (Exhibit “J”);

Written discovery requests served by Plaintiff and these Defendants have not been attached for the sake of brevity.

WHEREFORE, these Defendants exercise their right under the provisions of 28 U.S.C. § 1441, *et seq.* to remove this action from the State Court of Fulton County, Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 21st day of June, 2023.

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ATTORNEYS FOR DEFENDANTS
IRA D. MORRIS and L&J COX
TRUCKING, INC.

CERTIFICATE OF COMPLIANCE WITH N.D. GA. LOCAL RULE 5.1B

This is to certify that this pleading was created in Times New Roman 14-point font in accordance with Northern District of Georgia Local Rule 5.1B.

This 21st day of June, 2023.

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ATTORNEYS FOR DEFENDANTS
IRA D. MORRIS and L&J COX
TRUCKING, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the within and foregoing **NOTICE OF REMOVAL (Federal)** with the Clerk of Court in this matter and served a true copy of same by First Class U.S. Mail, proper postage prepaid, to counsel of record listed below.

James E. Peavy
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Attorney for Plaintiff

This 21st day of June, 2023.

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